

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK (S.D.N.Y.)

JOHN PETEREC TOLINO

Plaintiff /Claimant,

-against—

JURY TRIAL DEMAND
24-CV-6911 (UA)
SECOND AMENDED
VERIFIED COMPLAINT

PENNROSE, LLC;/

PENNROSE DEVELOPMENT, LLC;

RISEBORO COMMUNITY PARTNERSHIP,

HABITAT FOR HUMANITY- NEW YORK CITY,

NEW YORK CITY MAYOR, ERIC ADAMS,

CITY OF NEW YORK, COMMISSIONER OF HOUSING,

PRESERVATION & DEVELOPMENT (HPD): ADOLFO CARRION JR; AND

FIRST DEPUTY MAYOR, MARIA TORRES-SPRINGER,

& THE CITY OF NEW YORK, & THE US DEPARTMENT OF FISH &
WILDLIFE SERVICE

Defendants:-- (In their Official & Individual Capacities & Respondeat Superior).

1)-I, John Peterec-Tolino am the Plaintiff/Claimant in this action and have full standing to pursue such, as my reasons for such, impact the entire citizenry.

2)-Defendants: Pennrose, LLC; Pennrose Development, LLC; are headquartered at: 1301 N. 31st Street Philadelphia Pa; 19121 Phone #: (267) 386-8643.

They have a satellite office within the City of New York located at: 45 Main Street Suite 539, Brooklyn N.Y. 11201. They specialize in developing real estate property for low-income residents.

The City of New York and it's Department of Housing & Preservation & Development have chosen this LLC to develop a project called 'Haven Green' onto the land that encompasses the 'Elizabeth Street Garden' which is owned by the City of New York located just above 'Little Italy'.

3)-Defendant Riseboro Community Partnership is also involved with this 'Haven Green' Project coordinated with the City of New York's Dep't of Housing & Development. They are located at: 555 Bushwick Avenue, Bushwick, N.Y. 11206. Their contact phone number is: (718) 821-0254. It is a non-profit, having 501(c) (3) status.

4)-Defendant: Habitat for Humanity- New York is also involved in coordinating the 'Haven Green' Project. They also are a non-profit with 501 (c) (3) status. Their address is 111 John Street, New York, N.Y. 10038. Their phone contact number is: (212) 991-4000.

STATEMENT OF FACTS

5)-Within the New York State Court system, a Petition involving Elizabeth Street Garden, Inc; v The City of New York, Dep’t of Housing & Preservation & Development has run its course and the Elizabeth Street Garden, Inc; had until September 10th 2024 to leave. Then it got extended to October 17th of 2024. However, the Garden recently won a reprieve by a City of New York Civil Court Judge extending the date that the N.Y. City Marshals pad-lock the gates of the Elizabeth Street Garden to October 30th, of 2024.

6)-The Elizabeth Street Garden is just that, a Garden and NOT a lot. Despite this, the City of New York in prior litigation, portrayed the garden as a lot, falsely, as a means to have the State Supreme Court wrongly recognize such for eviction purposes. This was un-Constitutional and a violation of Judiciary Law § 487.

7)-The City of New York’s and Mayor Eric Adam’s and Dep’t of Housing & Preservation & Development (HPD) Commissioner, Adolfo Carrion Jr’s objective is to tear down this Majestic Garden despite the will of the people objecting-- in favor of 123—Unit Affordable Rental Complex for ‘senior citizens’ called: ‘Haven Green’ coordinated and done by almost all defendants herein. This, despite countless letters of objection to this occurring in the thousands to the City defendants. The main defendant pushing for this outrage, vehemently with her ‘blood-lust,’ is First Deputy Mayor, Maria Torres-Springer.

All of these New York City defendant's outrageous conduct and arrogance and lust for power & control, fail to recognize that *they* work for *us*, not the other way around. Furthermore, their claims to City property are improperly implied as those properties including the Elizabeth Street Garden as a result, *belong to the taxpayer*, NOT these defendants herein in any capacity. In fact, it is not too big of a stretch to insinuate that these defendants herein are committing 'theft' by inflicting what they deem as necessary upon the Elizabeth Street Garden as opposed to the community they are supposed to represent. Although their supposed plans to build needed housing as to being altruistic, is nothing but an illegal 'grab-bag,' being, close by are numerous better suited City owned properties for this purpose.

8)-All defendants herein are violating 'The Public Trust Doctrine', which has been around since Roman Times. In regards to the Elizabeth Street Garden,—The Public Trust Doctrine has been established that parks, open space, air waterways, shorelines and other natural resources *are to be preserved for public enjoyment*. Clearly, without 'splitting hairs', the Elizabeth Street Garden fully falls under this doctrine as per "open space" & "other natural resources". As such, the actions of these New York City defendants are un-Constitutional.

9)-Eric Adams, Adolfo Carrion, Jr; and Maria Torres-Springer all took oaths of office to uphold both the US Constitution and the Constitution of the State of New York to represent their constituents. Clearly, they all have vehemently violated such and as a result, any proposals instigated and planned by these individuals are hereby tainted and should be ordered as to being null & void.

This, due to the “sale” of the property that encompasses the Elizabeth Street Garden to Penrose Development, LLC; & Riseboro & Habitat for Humanity, NY City for \$ one (1) dollar despite being worth over \$40 million for the supposed ‘altruistic’ concept of: “building housing for homeless elderly people”— as to being one big farce. The proposed development will include ‘luxury retail office space’ and the affordability requirement is *not permanent*. As a result of this, the whole premise is a false one under the misrepresentation of addressing the worsening homeless problem in the City of New York, when in reality none of this will be continuous as the market rates will kick in eventually. As such, the sale of the Elizabeth Street Garden should have come to a vote from the tax-payers.

Yet, there were no open meetings to the public so-as to deny transparency. As such, the actions by these certain defendants and the City of New York should fall under the City of New York’s ‘False Claims Act’ and Civil actions are warranted under: § 7-804. However, such are orchestrated by the Corporation Counsel who represents the City of New York and its agents, so the conflict of interest couldn’t be worse. As such, I, as a private citizen and taxpayer am doing such in this Civil Action along with other claims & causes of action(s).

10)-A timely 90-day Notice of Claim under General Municipality Law had been filed with the City of New York Comptroller on September 3rd, 2024 to include The City of New York, Mayor Eric Adams and the Commissioner for the Department of Housing & Urban Development, Adolfo Carrion, Jr; etc. Please see EXHIBIT ONE (1) herein. The acknowledgement to such, was dated September 13th, 2024.

The proper time-frame has elapsed since then and as such, the City of New York and its Municipal Defendants were added as defendants in my First Amended Verified Complaint which superseded and replaced the Original Complaint based upon that similar premise. Now, this *Second* Amended Verified Complaint fully supersedes and replaces the first, where now being the City of New York and its municipal defendants sold the property which was city owned (really owned by the taxpayers) no longer have any skin in the game.

11)-I fully thank Chief United States District Court Judge, Laura Taylor Swain for her courageous September 18th ‘So Order’ for me to proceed without prepayment of fees under 28 USC § 1915. This, resulting in the United States Marshals to draft SUMMONES to serve upon each and every defendant herein along with what now will be this Second Amended Verified Complaint.

12)-The defendants herein insist that this development be jammed down the throats of Community Board 2 which encompasses that area above ‘Little Italy’ in NOHO despite enormous amounts of protestations which included film-maker & producer, Martin Scorsese, actor/film-maker Robert Dinero and Patti Smith.

13)-The City of New York has lost most of its amazing nostalgic character due to gentrification and the loss of open space as exemplified in those blogs and book called: “Vanishing New York”.—Such is also exemplified in the fictional novel: “The Last Phone Booth on the Left in Brooklyn” by J. Quest, (which I wrote using that pen-name).

14)-Little Italy and SoHo make up to 23% of Community Board 2's population, of which contains the Elizabeth Street Garden. Yet, have only 3% of that District's open space. The area is a 'concrete jungle'. This, was known by these defendants.

15)-This plaintiff is aware of the housing shortage as a crisis in the City of New York. However, there are many alternate sites of City property that can be used for affordable housing that would not impact the public at large as choosing the Elizabeth Street Garden will absolutely be. Such alternate sites for affordable housing are the following: A)-388 Hudson Street, B)-21 Spring Street, C)-137 Centre Street, D)-2 Howard Street & E)-Site of 3 of SPURA—Delancey Street & Norfolk Street. This too was known by The City of New York, yet insist that the oasis haven of the Elizabeth Street Garden be disposed of, as if as some vendetta to the people who reside there, ignoring their vehement opposition to such happening.

MORE THAN JUST A GARDEN WITH GORGEOUS STATUES

16)-The Elizabeth Street Garden is officially certified as to being a registered 'Way-Station' for the endangered Monarch Butterfly. Already documented by the International Union for Conservation of Nature (IUCN) way back in July 2022 as to being endangered. The Monarch Butterfly has entered the IUCN (International Union for Conservation of Nature) 'Red List' of endangered species.

17)-As such, the Elizabeth Street Garden qualifies as a Conservation Land Trust.

18)-Plaintiff, herein has first-hand knowledge of the decline of the majestic Monarch Butterfly as I breed them every year. This year was the worst on record as only two (2) Monarch caterpillars were found and I only saw 5 adult Monarch Butterflies the whole season.

19)-The Monarch Butterfly larva (caterpillars) live and eat exclusively on ‘Milk Weed’ leaves.

20)-The Elizabeth Street Garden has numerous Milk Weed plants every year that thrive, which you can’t find anywhere else in that neighborhood.

21)-The Elizabeth Street Garden has other plants that thrive there as well, the likes of flowers being: Roses, Zinnias, Marigold, Clover, Thistle and Golden Rod, etc; that the adult Monarch Butterfly feeds from the nectar extracted from these flowers as do other pollinators, like honey bees who have had their own struggles over the years.

22)-Developing the Elizabeth Street Garden would be the death nel of the Monarch Butterfly in Manhattan, an absolute travesty that would break my heart.-- The Monarch Butterfly is already as previously stated herein, is an ‘endangered species’.

THE ENDANGERED SPECIES ACT OF 1973

23)-The Endangered Species Act of 1973, 16 U.S.C. 1531 et seq; was designed to protect critically imperiled species from extinction as a “consequence of economic growth and development untampered by adequate concern and conservation.” The purposes of the ESA are two-fold: to prevent extinction and to recover species to the point where the law’s protection is not needed.—This all stems from the U.S. Department of Fish & Wildlife and the EPA.

24)-The U.S. Supreme Court found that “the plain intent of Congress enacting the ESA was to halt & reverse the trend toward species extinction, *whatever the cost.*”

25)-Back on December 12th, 2024, the U.S. Department of Fish & Wildlife began a proposal to also categorize the Monarch Butterfly as endangered. This proposal is guaranteed to come into effect right after March of 2025. See EXHIBIT TWO As such, claims and causes of action(s) of violating the Endangered Species Act of 1973 are hereby warranted as the characterization is soon inevitable.

Cause of Action(s) the moment the ‘Haven Green’ Project ensues. As such, an immediate stay to prevent any & all development must ensue, with all due respect. Arguments I have brought forth involving the Monarch Butterfly were not brought forth in the capacity that I have herein, in the prior State Article § 78 in regards to issues of ‘environmental impact review.’

As such, defendants herein cannot argue issues of Res Judicata or me being ‘collaterally estopped’ from stating such herein.

26)-Within that Article § 78 Petition, Defendant: The City of New York & The Department of Housing and Urban Development in both their submitted Uniform Land Use Review (ULURP) as well as their submitted City Environmental Quality Review Process (CEQRP) failed to provide anything of substance that would allow these violations of The Endangered Species Act of 1973 to not take effect regardless and not prevent developing the Elizabeth Street Garden. As such, the Endangered Species Act violation(s) takes into effect and overrides any defense via the Respondent’s/Defendant’s, that being the City of New York’s and the Dep’t of Housing & Urban Development’s submissions in that prior State Petition to successfully be used by these defendants herein.

27)-My Notice of Claim as per the ninety (90) day requirement is timely, as the Appellate Court’s Decision was on June 18th, 2024 for that prior State action. Furthermore, as per six (6) month ‘notice requirements’ All defendants via my prior Verified Complaints are ‘noticed’ as to my assertions that involve the Endangered Species Act of 1973, are more than the required six (6) months.

28)-The six (6) month notice requirement as per the US Department of Fish & Wildlife and the Department of the Interior have been met. See EXHIBIT THREE.

**FOR THE FIRST CAUSE OF ACTION—VIOLATION OF THE
ENDANGERED SPECIES ACT OF 1973**

29)-Defendants in their inevitable motions to dismiss via Federal Civil Procedure Rule 12(b)(6) and 12(b)(1) will argue that at the timing of the filing of this Second Amended Verified Complaint, that the US Department of Fish & Wildlife Service have not yet ‘officially’ designated the Monarch Butterfly as ‘endangered,’ although the process of such has indeed started months ago. “As such, I have no grounds or ‘jurisdiction’ to initiate this action.” I hereby respectfully rebut such assertions by stating via USC § 1748 & CPLR §2106, that never once was there any record of the U.S. Department of Fish & Wildlife Service when beginning a ‘proposal’ to designate species whether it be plant or animal as ‘endangered’-- to not follow through and designate such as ‘endangered’, along with designating ‘critical habitat’ for that respective species. As such, by the time my Opposition to all defendant’s motions to dismiss is due on March 28th of this year, the Monarch Butterfly *will be* characterized as ‘endangered’ by the U.S. Department of Fish & Wildlife Service as well. This is guaranteed and you can bet the house on this.

**FOR THE SECOND CAUSE OF ACTION AGAINST ONLY DEFENDANT
THE US DEPARTMENT OF FISH & WILDLIFE SERVICE—VIOLATION
OF SECTION 4 OF THE ESA—FAILURE TO DESIGNATE THE
ELIZABETH STREET GARDEN AS ‘CRITICAL HABITAT’ FOR THE
MONARCH BUTTERFLY DESPITE MY TIMELY 60 DAY NOTICE TO
SUE FOR SUCH VIOLATION(S)**

30)-While development is allowed in a Monarch Butterfly ‘way-station, such development is conditional.

The Elizabeth Street Garden when it was operating, closed every evening at 9:00 P.M; thus, acting like any N.Y. City Park. As such, all foot traffic and noise came to a halt until the next morning or next day. This allowed the Monarch Butterfly and other insects and birds to peacefully roost, which is/was absolutely necessary for their well-being. To deny them this, would negatively impact the Monarch Butterfly and other species, which are already over-stressed due to ‘human encroachment.’

The defendant’s other than the U.S. Department of Fish & Wildlife Service objective to build 123 units of ‘affordable housing’ will create foot-traffic and noise after 9:00 P.M; a fact that is inevitable. Whatever ‘open-space’ the developers constituting some of these defendants herein, won’t matter and will not mitigate those specific stresses upon the Monarch butterfly and other species unique to the Elizabeth Street Garden. As such, the ‘enticing’ premise of preserving *some* of the open space accompanying this Haven Green Development is nothing but a ‘smoke-screen’ to dupe the public. This development will severely negatively impact the well-being of the Monarch Butterfly. As such, the Elizabeth Street Garden must be designated as ‘critical habitat’ and not to be touched in any capacity. Housing of any kind is the type of development that can’t be allowed.

FOR THE THIRD CAUSE OF ACTION(S)—VIOLATIONS OF THE CITY OF NEW YORK’S FALSE CLAIMS ACT AND FRAUD BY OMISSION & CONSTRUCTIVE FRAUD VIA CPLR § 3106(h)

31)-All except the U.S. Department of Fish & Wildlife Service fall under this.

As previously stated herein on page five (5) and in detail as particularized satisfying the parameters of CPLR § 3106(h). The City of New York and these municipal defendants took it upon themselves and against ‘the will of the people’ make claims of “selling the land that encompasses the Elizabeth Street Garden to the developer defendants for one dollar” (despite the land being worth \$40 million) All in accordance that the developers create ‘affordable housing for homeless seniors in order to combat the growing homeless crises.’—However, a contract of this nature involving a ‘single dollar’ is implied and fraudulent as market rates on the units will undoubtedly come to be, being there is no clause to prevent such. This makes the entire premise one big misrepresentation upon the public as a whole. As such, all defendants except for the U.S. Department of Fish & Wildlife Service are hereby liable under § 7-804 via the City of New York’s False Claims Act, as well as under fraud by omission (by omitting the fact that the housing being proposed will not stay as ‘affordable’ forever.—As such, tenants will be squeezed and we are right back to the homeless crises). The constructive fraud claims are based upon these defendants ‘taking’ of this garden from the tax-payer (who are the true owners) as a sacrifice to combat the city’s homeless emergency.—Such, in the long-run is false, as all eventually go to the market rates which contribute to the homeless problem in the first place.

**FOR THE FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
EXCEPT THE US DEPARTMENT OF FISH & WILDLIFE SERVICE,--
VIOLATION OF ‘THE PUBLIC TRUST DOCTRINE’**

32)-For all stated herein on page four (4), these defendants are liable for this.

RELIEF SOUGHT

33)-Claimant/Petitioner herein seeks relief that the 'Haven Green' construction project to be **immediately stayed as injunctive relief** during this litigation and then permanently banned from being done within the Elizabeth Street Garden as well as any future development projects to be off limits with prejudice, as well as any & all evictions to be permanently rescinded with no pad-locking. This, due to the Elizabeth Street Garden as 'critical habitat' of the Monarch Butterfly. Any subsequent padlocking to be un-done immediately so as the Garden can be maintained. This would not burden the City of New York or the developers as there are many close-by options aside from the Elizabeth Street Garden. The garden should be considered 'critical habitat' for the Monarch Butterfly and that process has begun back in December of 2024 as per my correspondences to both the US Department of the Interior & the US Fish & Wildlife Service.

34)-This U.S. District Court is proper jurisdiction as this action is based mostly upon a Federal law/statute that was enacted by the U.S. Congress.

Respectfully Submitted,

John Peterec-Tolino, Plaintiff/Claimant, Pro se

John Peterec - Tolino

244 Fifth Avenue, Suite J-292, New York, N.Y. 10001

(917) 628-7300, otispdriftwood407@gmail.com

County of Sullivan
State of NY
The foregoing instrument was
acknowledged before me this
13 day of Feb 25 by
John Peterec
Name Of Person Seeking Acknowledgment
Karen Barclay
Notary Public
My Commission Expires 6/7/27

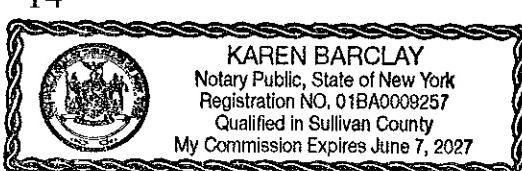


EXHIBIT ONE (1)



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
CLAIMS AND ADJUDICATIONS
1 CENTRE STREET ROOM 1200
NEW YORK, N.Y. 10007-2341

Brad Lander
COMPTROLLER

015 - 152

Date: 9/13/2024
RE: Acknowledgment - Law
JOHN PETEREC POLINO
Claim Number: 2024LW029117
Contract no:

JOHN PETEREC POLINO
244 5TH AV SUITE J 292
NEW YORK NY 10001

Receipt is hereby acknowledged of your claim against the City of New York. Please refer to the above claim number on any correspondence or inquiry you may have with this office. The claim is currently under investigation. If you have any questions regarding your claim, you may contact us at 212-669-4736.

Yours truly,
Bureau of Law & Adjustment

EXHIBIT TWO (2)

LEGAL STATUS

This site displays a prototype of a "Web 2.0" version of the daily Federal Register. It is not an official legal edition of the Federal Register, and does not replace the official print version or the official electronic version on GPO's govinfo.gov.

The documents posted on this site are XML renditions of published Federal Register documents. Each document posted on the site includes a link to the corresponding official PDF file on govinfo.gov. This prototype edition of the daily Federal Register on FederalRegister.gov will remain an unofficial informational resource until the Administrative Committee of the Federal Register (ACFR) issues a regulation granting it official legal status. For complete information about, and access to, our official publications and services, go to About the Federal Register on NARA's archives.gov.

The OFR/GPO partnership is committed to presenting accurate and reliable regulatory information on FederalRegister.gov with the objective of establishing the XML-based Federal Register as an ACFR-sanctioned publication in the future. While every effort has been made to ensure that the material on FederalRegister.gov is accurately displayed, consistent with the official SGML-based PDF version on govinfo.gov, those relying on it for legal research should verify their results against an official edition of the Federal Register. Until the ACFR grants it official status, the XML rendition of the daily Federal Register on FederalRegister.gov does not provide legal notice to the public or judicial notice to the courts.

LEGAL STATUS

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Monarch Butterfly and Designation of Critical Habitat

A Proposed Rule by the Fish and Wildlife Service on 12/12/2024



This document has a comment period that ends in 49 days. (03/12/2025)

10759 comments received. [View posted comments](#)

PUBLISHED CONTENT - DOCUMENT DETAILS

Agencies: Department of the Interior/Fish and Wildlife Service

Agency/Docket Numbers: Docket No. FWS-R3-ES-2024-0137

FXES1111090FEDR-256-FF09E21000

CFR: 50 CFR 17

Document Citation: 89 FR 100662

Document Number: 2024-28855

Document Type: Proposed Rule

Pages: 100662-100716 (55 pages)

Publication Date: 12/12/2024

RIN: 1018-BE30

PUBLISHED DOCUMENT: 2024-28855 (89 FR 100662)

DOCUMENT HEADINGS

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R3-ES-2024-0137; FXES1111090FEDR-256-FF09E21000]

RIN 1018-BE30

AGENCY:

Fish and Wildlife Service, Interior.

ACTION:

Proposed rule.

SUMMARY:

We, the U.S. Fish and Wildlife Service (Service), propose to list the monarch butterfly (*Danaus plexippus*), the iconic orange and black butterfly, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). We propose to list the monarch butterfly as a threatened species with protective regulations under section 4(d) of the Act (a "4(d) rule"). Finalizing this rule as proposed would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We also propose to designate critical habitat for the monarch butterfly under the Act. In total, approximately 4,395 acres (1,778 hectares) in Alameda, Marin, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties, California, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the monarch butterfly. We also are notifying the public that we have scheduled two informational meetings followed by public hearings on the proposed rule.

DATES:

We will accept comments received or postmarked on or before March 12, 2025.

Comments submitted electronically using the Federal eRulemaking Portal (see ADDRESSES below) must be received by 11:59 p.m. eastern time on the closing date.

hearings are not: They are forums for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at a public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSEES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at a public hearing must register before the hearing <https://www.fws.gov/species/monarch-danaus-plexippus> (<https://www.fws.gov/species/monarch-danaus-plexippus>). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3) ([https://www.ecfr.gov/current/title-50/section-424.16#p-424.16\(c\)\(3\)](https://www.ecfr.gov/current/title-50/section-424.16#p-424.16(c)(3))).

Previous Federal Actions

On August 26, 2014, we received a petition from the Center for Biological Diversity, Center for Food Safety, Xerces Society for Invertebrate Conservation, and Dr. Lincoln Brower, requesting that we list the monarch butterfly as a threatened species under the Act. On December 31, 2014, we published a 90-day finding that the petition presented substantial scientific or commercial information, indicating that listing the monarch butterfly may be warranted (79 FR 78775 (/citation/79-FR-78775)). On December 17, 2020, we published a 12-month finding that listing the species as an endangered or threatened species is warranted but precluded by higher priority actions (85 FR 81813 (/citation/85-FR-81813)). The species remained so designated in the annual candidate notices of review on May 3, 2022 (87 FR 26152 (/citation/87-FR-26152)), and June 27, 2023 (88 FR 41560 (/citation/88-FR-41560)).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the monarch butterfly. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270 (/citation/59-FR-34270)), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the

EXHIBIT THREE (3)

Sent via electronic mail and regular first-class mail

December 15th, 2024

Martha Williams, Director
U.S. Fish & Wildlife Service
1849 C Street, NW
Washington D.C. 20240
martha.williams@fws.gov

Deb Haaland, Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington D.C. 20240
deb.haaland@ios.doi.gov

RE: 60-DAY NOTICE OF INTENT TO SUE REGARDING VIOLATIONS
UNDER THE ENDANGERED SPECIES ACT IN FAILING TO DESIGNATE
CRITICAL HABITAT FOR THE MONARCH BUTTERFLY

Dear Director Williams & Secretary Haaland,

This letter serves as my sixty (60) day notice of intent to sue if need be, the US Fish & Wildlife Service over violations of Section 4 of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* The Service has recently stated its intent to characterize the Monarch Butterfly as an endangered species. However, the Service has failed to designate critical habitat for the Monarch Butterfly. The only areas considered, are in Southern California. However, I have first-hand knowledge that the Monarch Butterfly is suffering a drastic decline in New York State. *Id* §§ 1533(a)(3)(A), 1533(b)(6)(C). The Service's failure deprives the Monarch Butterfly the needed protections and further risks it becoming extinct altogether. This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the Act, to the extent that such notice is deemed needed by the Court.

**THE ESA REQUIRES THE SERVICE IMMEDIATELY
DESIGNATE CRITICAL HABITAT OF THE ELIZABETH STREET
GARDEN LOCATED IN LOWER MANHATTEN IN NOHO, ABOVE
'LITTLE ITALY' OFF PRINCE & SPRING STREETS FOR THE
MONARCH BUTTERFLY, AS SUCH THIS GARDEN FOR THE SPECIES
IS ALREADY DESIGNATED AS A WAY-STATION**

In enacting the ESA, Congress recognized that certain species have depleted in numbers that they are threatened with extinction. *Id* § 1531(a)(2). The primary purpose of the ESA is “to provide a means whereby the ecosystems upon which those species depend upon, must be preserved and conserved and to provide for the conservation of such species”. *Id* § 1531(b)

As such, Congress amended Section 4 of the ESA in 1978 to mandate that, when the Service lists a species as endangered as will soon occur with the Monarch Butterfly, the Service must designate critical habitat for that species. Southern California areas are barely enough. In New York City, the Elizabeth Street Garden is tragically slated to be destroyed and replaced with housing development, thus threatening significantly, the Monarch Butterfly. For this reason, the Service must permanently conserve the Elizabeth Street Garden as it has been for 200 years. Section 4(a)(3)(A)(i) of the Act states: “to the maximum extent prudent & determinable,” the Service shall concurrently when determining a species as endangered, must designate as much critical habitat as possible”.

Section 3 of the Act defines critical habitat as:

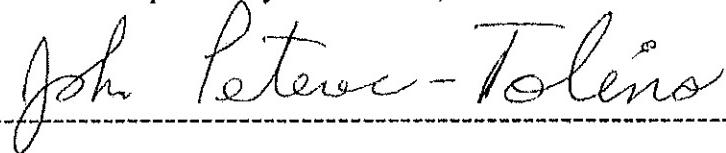
The specific areas within a geographical area occupied by the species, at the time it is listed in accordance with the Act on which are found those physical or biological items essential to the species. The Elizabeth Street Garden grows so much milkweed, the food-source of the Monarch caterpillars or larvae. Also thriving are all kinds of flowers the likes of Zinnias, Marigolds, Clover, Thistle, Goldenrod and such, providing nectar for the adult Monarch Butterfly and other pollinators like bees.

As such, the Service must with all due respect, finalize the Elizabeth Street Garden as ‘critical habitat’ and not to be developed in any capacity. *Id* 1533(b)(6)(C)(i).

The Service’s failure to designate the Elizabeth Street Garden in lower Manhattan off Prince & Spring Streets near ‘Little Italy’ as a critical habitat for the Monarch Butterfly would constitute a violation of the Act. As previously stated herein, the Elizabeth Street Garden is already a designated ‘way-station’ for the butterfly.

I am eager to discuss this with the Service to address this most crucial of issues as time is of the essence as the magnificent garden is slated for development. IF the Service does not act to have this ensue within 60 days, then I will have to pursue litigation in federal Court adding the Service as a defendant in a case already filed but may require a new amended draft of such,

Respectfully submitted,



John Peterec-Tolino, 244 Fifth Avenue, Suite J-292

New York, N.Y. 10001, (917) 628-7300

otispdriftwood407@gmail.com

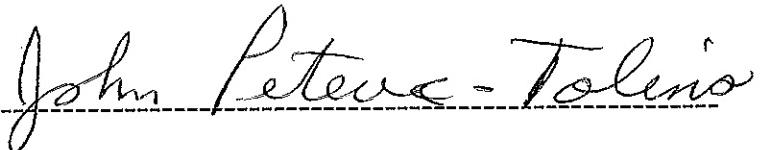
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW
YORK (S.D.N.Y.)

Re: John Peterec Tolino v Pennrose LLC; et al. **Case No. 24-CV-6911 (JGK)**

AFFIRMATION OF SERVICE

Plaintiff Pro Se Affirms that defendants were served the attached ‘Second Amended Verified Complaint’, which includes The U.S. Fish & Wildlife Service/Department of the Interior. All were served electronically at the following: ntaylor@law.nyc.gov, DSegars@law.nyc.gov, KCooperman@cozen.com, james.bernard@hoganlovells.com, KFisher@cozen.com, GEisenberg@perkinscoie.com, creo@law.nyc.gov, daniel.whalen@hoganlovells.com, & lastly, Interior_Press@ois.doi.gov on Thursday, February, 13th, 2025. Please be respectfully advised, that the U.S. Fish & Wildlife Service require a Summons from the U.S. Marshal. Please see attached forms filled out.

Respectfully Submitted,


John Peterec Tolino

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